

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FIDEL HUTCHINS,

Plaintiff,

CIVIL ACTION NO. 12-12354

v.

DISTRICT JUDGE GERALD E. ROSEN

MAGISTRATE JUDGE MARK A. RANDON

BARBARA SAMPSON, et al.,

Defendants.

**REPORT AND RECOMMENDATION TO DENY AS MOOT PLAINTIFF'S MOTION
FOR PRELIMINARY INJUNCTION (DKT. NO. 37)**

I. INTRODUCTION

Plaintiff brought this prisoner civil rights case alleging Defendants unconstitutionally imposed a no-contact provision as part of his parole. Subsequently, Plaintiff filed a motion for preliminary injunction (Dkt. No. 37). Defendants responded (Dkt. No. 51).

Because Plaintiff was released from prison on May 1, 2013, this Magistrate Judge

RECOMMENDS that Plaintiff's motion be **DENIED AS MOOT**.

II. APPLICABLE LAW AND ANALYSIS

A. *Standard of Review*

In determining whether to issue a preliminary injunction, a court must balance the following four factors:

- (1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury without the injunction; (3) whether issuance of the injunction would cause substantial harm to others; and (4) whether the public interest would be served by issuance of the injunction.

Rock & Roll Hall of Fame Museum, Inc. v. Gentile Prods., 134 F.3d 749, 753 (6th Cir. 1998)

(citation omitted).

B. Plaintiff will not Suffer Irreparable Injury without the Injunction

Plaintiff's motion seeks an injunction prohibiting the parole board and parole officers from: (1) adding a no-contact provision as a condition of his parole; (2) arresting him for violating the no-contact provision; (3) issuing conditions of parole by computer; (4) issuing conditions without due process; and (5) failing to determine whether an offender committed a violent crime before imposing parole conditions.

In *Michigan Coalition of Radioactive Material Users v. Griepentrog*, 945 F.2d 150, 154 (6th Cir. 1991), the Sixth Circuit explained the irreparable injury element: the harm alleged must be both certain and immediate, rather than speculative or theoretical. The absence of irreparable injury ends the Court's inquiry into the issuance of preliminary injunction relief. *See Metrobank v. Fed. Home Loan Bank Bd.*, 666 F. Supp. 981, 984 (E.D. Mich. 1987) (citations omitted).

Plaintiff was released from prison on May 1, 2013 after serving his maximum sentence; he will not appear before the parole board or be supervised by a parole officer on the offense for which the parole board imposed the no-contact order. Therefore, Plaintiff cannot prove that he will suffer irreparable injury without the injunction, and his motion should be denied.

III. CONCLUSION

Because Plaintiff was released from prison on May 1, 2013, this Magistrate Judge **RECOMMENDS** that Plaintiff's motion be **DENIED AS MOOT**.

The parties to this action may object to and seek review of this Report and Recommendation within fourteen (14) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1). Failure to file specific objections constitutes a waiver of any further right of

appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *Frontier Ins. Co. v. Blaty*, 454 F.3d 590, 596 (6th Cir. 2006); *United States v. Sullivan*, 431 F.3d 976, 984 (6th Cir. 2005). The parties are advised that making some objections, but failing to raise others, will not preserve all the objections a party may have to this Report and Recommendation. *See McClanahan v. Comm'r Soc. Sec.*, 474 F.3d 830 (6th Cir. 2006) (internal quotation marks omitted); *Frontier*, 454 F.3d at 596-97. Objections are to be filed through the Case Management/Electronic Case Filing (CM/ECF) system or, if an appropriate exception applies, through the Clerk's Office. *See* E.D. Mich. LR 5.1. A copy of any objections is to be served upon this Magistrate Judge but this does not constitute filing. *See* E.D. Mich. LR 72.1(d)(2). Once an objection is filed, a response is due within fourteen (14) days of service, and a reply brief may be filed within seven (7) days of service of the response. *See* E.D. Mich. LR 72.1(d)(3), (4).

s/Mark A. Randon
 MARK A. RANDON
 UNITED STATES MAGISTRATE JUDGE

Dated: June 28, 2013

Certificate of Service

I hereby certify that a copy of the foregoing document was served on the parties of record on this date, June 28, 2013, by electronic and/or first class U.S. mail.

s/Eddrey Butts
 Case Manager to Magistrate Judge Mark A. Randon